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No. 447

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

ALABAMA HIGHWAY EXPRESS, INC., BAGGETT TRANSPORTATION COMPANY, CAMPBELL SIXTY-SIX EXPRESS, INC., and GORDONS TRANSPORTS, INC.,
Appellants,
v.
UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of Alabama, Southern Division.

JURISDICTIONAL STATEMENT.

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ALABAMA HIGHWAY EXPRESS, INC., BAGGETT TRANSPORTATION COMPANY, CAMPBELL SIXTY-SIX EXPRESS, INC., AND GORDONS TRANSPORTS, INC., *Appellants*,

v.

UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

JURISDICTIONAL STATEMENT.

OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of Alabama, Southern Division, is reported at 241 F. Supp. 290. The decision of the Interstate Commerce Commission there under review, is not officially reported.

Appended hereto marked Appendix A is the decision of the United States District Court for the Northern District of Alabama, Southern Division, rendered May 21, 1965; as Appendix B is the Order of that Court also entered May 21, 1965.

Appendix C is the underlying Order of Division 3 of the Interstate Commerce Commission dated August 7, 1964, service date August 13, 1964. Appendix D is the Order of Division 3, dated December 18, 1964, service date December 28, 1964. Appendix E is the order of the Interstate Commerce Commission, dated January 25, 1965, service

date February 1, 1965, and Appendix F is the underlying recommended report and order of Examiner David S. Letts, served December 12, 1963.

JURISDICTION.

This action was originally brought under the provisions of Secs. 204 (c) and 212 (a) of the Interstate Commerce Act, 49 U. S. C. 304 (c) and 312 (a), Sec. 10 of the Administrative Procedure Act, 5 U. S. C. 1009, and Secs. 1336, 1398, 2284 and 2321 to 2325, inclusive, of the Judicial Code, 28 U. S. C. 1336, 1398, 2284 and 2321 to 2325, inclusive, with the United States being named as party defendant pursuant to 28 U. S. C. 2322.

The jurisdiction of the Supreme Court to review by direct appeal is conferred by Secs. 1253 and 2101 (b) of the Judicial Code, 28 U. S. C. 1253 and 2101 (b).

The original action was brought for the purpose of annulling and setting aside the appended orders of the Interstate Commerce Commission.

The judgment of the District Court of Alabama in the action below was rendered May 21, 1965, and a timely notice of appeal from that decision was filed June 24, 1965.

The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal in this case:

I. C. C. v. J-T Transport Company, 368 U. S. 81;
United States v. Drum, 368 U. S. 370; and
American Trucking Associations, Inc., et al. v. U. S., et al., 364 U. S. 1.

STATUTES INVOLVED.

In substance, two statutes are involved, that which authorizes judicial review, 5 U. S. C., Sec. 1009 (c), a portion of the Administrative Procedure Act, which provides:

"Scope of review—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of any agency action. It shall (a) compel agency action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of Secs. 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court. In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

In addition Sec. 5 of 49 U. S. C., particularly sub-sections (2) (a) and (b) which entrusts to the Interstate Commerce Commission the requirement of approving or disapproving of combinations or consolidations of carriers.

These sections are as follows:

"(2) (a). It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b)—

(i) for two or more carriers to consolidate or merge their properties, or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties